

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: : **BK NO. 11-17320-elf**
:
LEONARD S BERGMAN : **Chapter No. 7**
MICHELE J BERGMAN :
:
:
Debtors :

**SEAVIEW BEACH CONDOMINIUM ASSOCIATION'S MEMORANDUM IN
OPPOSITION TO DEBTORS' MOTION TO REOPEN CASE**

Seaview Beach Condominium Association (hereinafter referred to as "Seaview"), by its attorneys Briggs Law Office, LLC, responds to Debtors' Motion To Reopen Case pursuant to 11 U.S.C. 350 as follows:

The sole case cited by Debtors is In re Coonfield, 517 B.R. 239 (Bankr. E.D.Wash 2014). As an initial matter, Coonfield is not binding on this Court. In Coonfield, the debtors sought relief by way of a Chapter 13 bankruptcy proceeding. The Court conducts an analysis of the dischargeability of post-petition home owners association ("HOA") fees under 11 U.S.C.A §1328(a). Under §1328(a), the exemption for HOA and condominium fees set forth in 11 U.S.C.A. § 523(a)(16) does *not* apply. The Court determined that the cannons of statutory construction compelled the conclusion that HOA and condominium fees are therefore dischargeable under §1328 (a), explaining:

Congress defined "debt" broadly and took care to except particular debts from discharge where policy considerations so warranted. Accordingly, Congress secured a broader discharge for debtors under Chapter 13 than Chapter 7 by extending to Chapter 13 proceedings some, but not all, of § 523(a)'s exceptions to discharge. See 5 Collier on Bankruptcy ¶ 1328.01[1][c] (15th ed. 1986) ("[T]he dischargeability of debts in chapter 13 that are not dischargeable in chapter 7 represents a policy judgment that [it] is preferable for debtors to attempt to pay such debts to the best of their abilities over three years rather than for those debtors to have those debts hanging over their heads indefinitely, perhaps for the rest of their lives") (footnote omitted).... Thus, to construe "debt" narrowly in this context

would be to override the balance Congress struck in crafting the appropriate discharge exceptions for Chapter 7 and Chapter 13 debtors.

Id., quoting Pennsylvania Dept. of Public Welfare v Davenport, 495 U.S. 552 (1990).

Here, Debtors did not obtain a discharge pursuant to §1328(a). Rather, the discharge was obtained under Chapter 7, 11 U.S.C. § 727. Unlike §1328(a), *all* §727 exemptions apply to §727 discharges. Therefore, Debtors have not cited any legal precedent in support of their position. In turn, Debtors failed to show any likelihood of success on the merits of their claim, were this Honorable Court to reopen their bankruptcy. Ergo, their Motion should be denied.

Respectfully Submitted by:

/s/ Norman W. Briggs, Esq.
NORMAN W. BRIGGS, ESQUIRE
ADRIENNE CHAPMAN, ESQUIRE
Pa Attorney ID No. 60940/ 307818
BRIGGS LAW OFFICE, LLC
400 Market Street
Suite 730
Philadelphia, PA 19106
(215) 925-4632

Attorneys for: Seaview Beach Condominium Association

Dated: July 25, 2017

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Norman Briggs, Esquire, hereby certifies that a copy of Seaview Beach Condominium Association's Memorandum in Opposition to Debtors' Motion To Reopen Case which has been filed in the above matter, was sent via first class U.S. Mail on the date listed below to the following:

Bonnie Finkel, Trustee 37
Manning Lane
Cherry Hill, NJ 08003

Stanton M. Lacks, Esq. 3220
Tillman Drive, Suite 100
Bensalem, PA 19020

BAC Home Loan/Countrywide
450 American St. South Simi
Valley, CA 93065

Deutsch Bank National Trust 1761
E St Andrew PL Santa Ana, CA
92705

Zucker, Goldberg & Ackerman 200
Sheffield St, Suite 301
Mountainside, NJ 07092-0024

July 25, 2017

/s/ Norman W. Briggs, Esq.
NORMAN W. BRIGGS, ESQUIRE
Attorney ID No. 60940
BRIGGS LAW OFFICE, LLC
400 Market Street, Suite 730
Philadelphia, PA 19106
(215) 925-4632